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Supreme Court, U.S.
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No. 94-978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOSLYN MANUFACTURING COMPANY,
Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent.

LIBERTY MUTUAL INSURANCE COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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QUESTIONS PRESENTED FOR REVIEW.

Whether the Fifth Circuit properly applied Louisiana precedent as required by *Erie* v . *Tompkins*, in concluding that an untimely claim was outside the coverage of an insurance policy that required immediate notice of such a claim?

Whether the Fifth Circuit properly exercised its discretion in refusing to certify a case where there is no uncertainty as to applicable state law?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

For the reasons set forth below, Respondent Liberty Mutual Insurance Company ("Liberty Mutual") respectfully requests that this Court deny the Petition For a Writ of Certiorari filed by Joslyn Manufacturing Company ("Joslyn") to review the decision of the United States Court of Appeals for the Fifth Circuit in the above-captioned case, entered on September 2, 1994.

Statement of the Case.

A. *Factual Background*

This declaratory judgment action arises out of environmental contamination at a wood treating plant once owned by Joslyn in Bossier City, Louisiana. Although Joslyn, in its Petition, begins its factual statement of the regulatory history with the August 2, 1986 Order of the Louisiana Department of Environmental Quality Compliance, the relevant events actually begin well before that. In December, 1985, the DEQ sent Joslyn an information request concerning the Bossier City site in which it stated: "As a former owner and operator we feel that you are a party responsible under La. R.S. 30:1149.13 and 42 U.S.C. § 9607(a) for the cleanup of wastes that have been found at [the Lincoln Creosote] site." (App. A.) Joslyn hired counsel and submitted a response to this letter which, among other things, identified Liberty Mutual as Joslyn's insurance carrier for the site. (App. B).

On or about February 3, 1986, the DEQ issued a Compliance Order in which it concluded that Joslyn was an owner and operator of a facility from which there had been a discharge or disposal of a hazardous substance. On or about February 18, 1986, the DEQ issued an interim Compliance Order to Joslyn. (App. C).

Some months later, on or about August 2, 1986, the DEQ issued a broader Order to Joslyn, directing it to investigate and clean up the site. (Joslyn App. A, 2a-3a). This Order concluded that Joslyn was an "owner", "generator" or "disposer" subject to remedial costs and cleanup liability for hazardous waste disposal sites under both La. R.S. 30:1149.46 and CERCLA.[1] (App. D).

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[1] Joslyn's characterization of the August 2, 1986 DEQ Order as simply calling upon Joslyn to submit a letter stating whether it would "voluntarily" investigate and clean up the site is disingenuous at best. This Order, which was discussed in the opinion below, clearly *directed* Joslyn to investigate and clean up the site and specified a $50,000 penalty for each day of noncompliance. (App. D).

Joslyn's first notice to Liberty Mutual of *any* of the DEQ Orders came in May, 1987.

B. *Proceedings Below*

Other than Joslyn's statement that "the Fifth Circuit acknowledged that its *MGIC* decision was inconsistent with *Jackson*," an assertion that is contradicted by the opinion below (Petition at page 5), Liberty Mutual adopts Joslyn's statement of the proceedings.

Summary of Argument.

In reaching its decision, the United States Court of Appeals for the Fifth Circuit reviewed and analyzed Louisiana law and its own earlier decisions applying that law. Joslyn disagrees with the Fifth Circuit's construction of Louisiana law and, therefore, argues that the doctrine of *Erie R. Co.* v. *Tompkins*, 304 U.S. 69 (1938) has been violated. Further, although it insists that the applicable law is clear as set forth by the Louisiana Supreme Court in *Jackson* v. *State Farm Mutual Auto Ins. Co.*, 23 So.2d 765 (La. App. 1945), *reversed*, 29 So.2d 177 (La. 1946), Joslyn nonetheless argues that the Fifth Circuit should have certified the issue to the Louisiana Supreme Court. The law of Louisiana on this issue is not unclear; it has been articulated by the Louisiana Supreme Court and lower appellate courts and construed on several occasions by the Fifth Circuit. Further, the decision below, although not adopting the extreme view of the controlling law which Joslyn advocates, is wholly consistent with *Jackson*. Thus, the Fifth Circuit has complied with *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938).

The backbone of Joslyn's argument is that *Jackson* mandates a showing of prejudice to the insurer before coverage for an untimely claim may be denied. This assertion is flatly contra-

dicted by the *Jackson* decision. Rather than laying down any black-letter rules for determining when a policyholder's late notice will bar it from obtaining insurance coverage, *Jackson* identifies a number of factors which a court *may* consider on a case by case basis as part of a balancing of equities to determine whether a policyholder's late notice will bar coverage. While late notice is one factor that may be considered, *Jackson* does not require an insurance company to demonstrate that it was prejudiced by a policyholder's late notice before it may deny coverage.

The Fifth Circuit's decision was not rendered in ignorance or in derogation of *Jackson*; the Fifth Circuit followed and applied *Jackson*. It appropriately considered the facts and circumstances of this case, the equitable factors articulated by *Jackson* and the express language of the insurance policy. Although the *Jackson* court found that coverage in that case was not precluded because of late notice, the Fifth Circuit appropriately distinguished the facts of this case from those of *Jackson* and reached the opposite result. *Erie* requires only that the Fifth Circuit apply the law of Louisiana. The Fifth Circuit complied with that requirement. Merely because the Fifth Circuit reached a different result than *Jackson*, on different facts, does not mean that the Fifth Circuit failed to comply with *Erie*.

Because there is no unsettled question of Louisiana law, and because it properly applied *Jackson*, the court below did not abuse its discretion in refusing to certify this case to the Louisiana Supreme Court. As petitioner has failed to demonstrate any basis for a grant of certiorari, its petition should be denied.

Argument.

I. The Fifth Circuit Applied Louisiana Law In This Case As Required By *Erie*.

The first step in determining whether the Fifth Circuit failed to apply Louisiana law regarding late notice is to ascertain Louisiana law. Joslyn bases its argument solely on its construction of *Jackson*, the only Louisiana Supreme Court case that addresses late notice.

A. *Louisiana Law Does Not Impose A "Prejudice Requirement" On Late Notice Cases.*

Joslyn says that *Jackson* imposes a "prejudice requirement" for an insurer to disclaim coverage as a result of late notice. (Petition at p. 10). This is incorrect. *Jackson* does not hold that an insurer must demonstrate that it was prejudiced by a policyholder's late notice; rather, *Jackson* says that the court "*may* consider" a number of factors, including prejudice, in determining whether coverage is barred. 29 So.2d at 179 (emphasis added). Nowhere does *Jackson* say that prejudice is required to support a denial of coverage for late notice.

The essence of the *Jackson* ruling is a rejection of any *per se* rule in favor of a "balancing the equities" test. *Jackson* specifies that "each case involving delayed notice must stand upon its own facts and circumstances." 29 So.2d at 179. Rather than setting down a strict rule that must be applied mechanistically, *Jackson* identifies factors that a court may consider in balancing the equities and determining whether a particular claim is barred because of late notice.

Central to *Jackson* (and to those Louisiana cases which have followed it) was the Court's view that "the *average citizen* who purchases a public liability policy seldom, if ever, becomes familiar with its detailed provisions. . . ." *Jackson*, 29 So.2d 178 (emphasis added). The rationale of *Jackson* is an equitable one: to protect average consumers who may not be aware of their notice obligations. *Jackson*, like other similar Louisiana appellate court cases, involved individual, as distinct from corporate, policyholders. As a result, the balancing of equities which is central to *Jackson* involved a very different calculus than it did in this case; sophisticated policyholders do not need the extra protection by the courts contemplated by *Jackson*. It is not inequitable to hold such insureds to the terms of the contracts they make. As the Fifth Circuit noted, Joslyn is not an average citizen purchasing an insurance policy, but rather is a sophisticated business entity. As such, it is capable of following the clear condition precedent notice requirement of its policy.

B. *A Balancing Of The Equities As Established By Jackson Supports Enforcement Of The Notice Requirement In Joslyn's Policy.*

The Louisiana Supreme Court in *Jackson* undertook a "balancing of the equities." 29 So.2d 179. In addition to prejudice to the insurer, *Jackson* says that courts may also consider other factors, such as when the insured first discovered that substantial injury had been done or that a claim would be made against it, and the good faith of the insured. *Id.* The *Jackson* court ultimately granted coverage because it found that the insured "had reasonable grounds to believe that no claim would be made [against him] until the [demand of which he first informed his insurance company] was made upon him." *Id.* In *Jackson*, the insured immediately told the insurer about the

claim against him (as opposed to the accident that led to the claim).[2] As the Court below noted, Joslyn waited at least nine months before giving Liberty Mutual notice of the *claim* against it. Indeed, the record before the Fifth Circuit shows that Joslyn was aware of the claim for nearly one and a half *years* before it notified Liberty Mutual.

Under *Jackson*, the good faith of the policyholder is an important factor in balancing the equities. Louisiana courts have excused individual policyholders from compliance with the notice requirement where they have had a good reason for noncompliance. For example, in *Howard* v. *Early Chevrolet-Pontiac-Cadillac, Inc.*, 150 So.2d 309, 312 (La. App. Ct. 2d Cir. 1963), the court found coverage despite late notice. Central to the court's holding was its finding that the policyholders:

> had no intent or reason for withholding notice from the insurer and it was by accident that . . . in talking to an insurance agent, Mrs. Early [plaintiff's wife] discovered the possibility that the policy might afford relief.

In *Howard*, the policyholder's late notice was inadvertent and was rectified as soon as the policyholder learned the facts that would justify a claim. *See also, Reid* v. *Monticello*, 44 So.2d 509, 512 (La. App. Ct. 1st Cir. 1950) (policyholder gave notice "as soon as he knew that he had coverage with the company. He was in perfect and good faith in his delay."); *Davis* v. *Allstate*, 272 So.2d 458 (La. App. Ct. 2d Cir. 1973).

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[2] As another Louisiana case noted:

> In [*Jackson*] there had been a lapse of eighty-two days between the date of the accident and receipt of notice by the insurer; but the parents of the deceased child had informed the insured at the time of the accident that they would not prosecute a claim, and *as soon as they informed him of their change of intention, he gave notice to the insurer.*

West v. *Monroe Bakery*, 217 La. 189, 46 So.2d 122, 128 (1950). (emphasis added).

("Nowhere is it contended that plaintiff's alleged failure to comply with the terms of the contract was predicated upon fraud or induced by any desire or purpose to mislead defendant or to conceal from it any fact. . . .").[3]

In this case, Joslyn failed to provide notice even though it had more than "reasonable grounds to believe" that a claim would be made against it. Indeed, it knew that a claim had been made against it by the Louisiana DEQ long before it gave notice to Liberty Mutual. Nonetheless, it chose not to inform Liberty Mutual of this claim, despite the fact it had hired a lawyer to represent it, engaged in negotiations with the DEQ and negotiated a consent decree giving the DEQ much of the relief that it sought. Unlike the insureds in the cases cited above, Joslyn was not unaware either of the identity of its insurer or that a claim had been made against it. All of these facts were considered by the Fifth Circuit in accordance with *Jackson*.

C. *The Fifth Circuit Followed* Jackson *And Louisiana Law.*

There is no *per se* rule in Louisiana for determining when coverage should be denied because of a policyholder's delay in giving notice. Rather, *Jackson* identifies factors that a court may consider in balancing the equities. The court below reviewed the factors as set out in *Jackson* and applied them to the facts of this case:

> Our factual scenario requires us to distinguish *Jackson* and follow the precedent laid down in *MGIC*. Unlike the instant case, the insured in *Jackson* had reasonable grounds to believe that no claim would be made until the demand was made upon him. *Jack-*

[3] These cases also involved unsophisticated policyholders.

> *son*, 29 So.2d 177, 179. Additionally, the insured was only eighty-two days tardy in providing the necessary notice, *id.* at 177, as opposed to Joslyn's nine-month delay. And finally, the court in *Jackson* was painstakingly trying to protect the average citizen who purchases a public liability policy without becoming familiar with its detailed provisions, but simply puts it away against the day when a claim may be made against him. *Id.* at 178. Moreover, the claim in *Jackson* was brought by an injured third party against the insurance company. This court adopted the same prejudice inquiry for claims brought pursuant to the Louisiana Direct Action Statute. *See Auster*, 89 F.2d at 578 (holding non-prejudicial delay in notice could not bar recovery by third party claimant under statute). Such is not the case before us. Joslyn is not a third party claimant, but a sophisticated business entity. Consequently, these equitable exceptions do not weigh in this favor.

(Joslyn App. 8a).

Thus, because the notice requirement was a condition precedent to coverage and because Joslyn was not an unsophisticated insured or a third party claimant, and because its notice was nine months late, equitable considerations did not excuse Joslyn's noncompliance with the contract. This result is wholly consistent with *Jackson* and Louisiana law.

The court below relied in part on its earlier decision in *MGIC Indem. Corp.* v. *Central Bank of Monroe, La.*, 838 F.2d 1382 (5th Cir. 1988). *MGIC* held that an insurance carrier was not required to demonstrate prejudice in order to deny coverage on the grounds of late notice where the policyholder was a "sophisticated insured" and its obligation to give timely notice was a "condition precedent" of its insurance policy. The

MGIC court considered Louisiana lower court cases which had required an insurer to show prejudice "where the policyholders were consumers unlikely to be conversant with all the fine print of their policies." *MGIC*, 838 F.2d 1387. The court concluded that the equitable rationale of requiring prejudice did not apply where both parties were sophisticated businesses. *Id.*

Much of Joslyn's petition is devoted to arguing that *MGIC* is inconsistent with Louisiana law. By focusing on *MGIC*, rather than the Fifth Circuit's decision on this case, Joslyn ignores the fact that the Fifth Circuit in this case did not apply a *per se* "condition precedent" rule. In this case, the Fifth Circuit acknowledged that a *per se* "condition precedent" rule was inconsistent with *Jackson*; the court correctly held that *Jackson* required it to consider all the facts and circumstances in "balancing the equities". (Joslyn App. A, 7a). *Jackson* nowhere suggests that the actual language of the policies, including any "condition precedent" language, is not a relevant factor to consider in balancing the equities.

Based on the facts before it, and the factors that *Jackson* directed it to consider, the Fifth Circuit was fully justified in finding that Joslyn's coverage was barred as a result of late notice, even without any showing of prejudice by Liberty Mutual. On the facts before it, the Fifth Circuit was not obligated to require, or even consider, prejudice; certainly *Jackson* does not say otherwise.

II. The Fifth Circuit's Denial Of Joslyn's Motion To Certify Did Not Violate *Erie*.

Joslyn also contends that the Fifth Circuit violated *Erie* by denying Joslyn's motion to certify this case to the Louisiana Supreme Court. Joslyn argues that the Fifth Circuit decided that *Jackson* was not controlling precedent. (Petition at 13). As is

discussed above, this is incorrect; the Fifth Circuit considered and followed *Jackson*. There is no basis for Joslyn's contention that the Fifth Circuit's refusal to certify this question violated *Erie*.

Further, as Joslyn acknowledges, certification is discretionary. Fifth Circuit's determination that certification is inappropriate is clearly within its sound discretion. (Petition at 13). Moreover, certification is generally appropriate only where local law is unsettled. *Lehman Brothers* v. *Schein*, 416 U.S. 386 (1974). That is not the case here. As Joslyn strenuously argues, there is a controlling precedent in *Jackson*. There is, thus, no undecided question of state law to be decided by the Louisiana Supreme Court.

What Joslyn seeks to have certified is not a question of law; rather, it wants a different court to undertake the weighing and balancing of the equitable factors identified by *Jackson*. The application of the law to the facts was appropriately undertaken by the courts with jurisdiction in this case. Joslyn has no right to have the performance of such a test abdicated by the Fifth Circuit to the Louisiana Supreme Court.

In this case, there is no doubt as to either the local law or to its application by the Fifth Circuit. Joslyn takes issue only with the Fifth Circuit's application of that law; this is an inappropriate subject for certification. *Lehman Brothers* v. *Schein*, 416 U.S. 386 (1974), relied upon by Joslyn, is not to the contrary. In *Lehman Brothers*, this Court found that certification was appropriate because Florida law was unsettled. 416 U.S. 391. In this case, even Joslyn does not claim that Louisiana law is unsettled.

Under the circumstances, there is no basis to conclude that the Fifth Circuit abused its discretion by denying Joslyn's motion to certify. Accordingly, Joslyn's petition should be denied.

Conclusion.

For the foregoing reasons, Liberty Mutual respectfully requests that Court deny Joslyn's Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX A.

EDWIN W. EDWARDS December 6, 1985 PATRICIA L. NORTON

Joslyn Manufacturing and Supply Co.
% C. T. Corporation, Agent for
Service of Process
400 Poydras Street
New Orleans, Louisiana 70130

CERTIFIED MAIL (P181812304)
RETURN RECEIPT REQUESTED

Re: Lincoln Creosoting Facilities,
Bossier City, Louisiana

Gentlemen:

The Louisiana Department of Environmental Quality (DEQ) has a statutory mandate to protect public health and the environment from the adverse effects of hazardous wastes and substances. The Louisiana Environmental Quality Act assigns liability for pollution and contamination and an affirmative duty to take remedial action under its statutes relating to hazardous wastes (R.S. 1148), hazardous substances (R.S. 1149.41) and water pollution control (R.S. 1097). Persons liable under these provisions are not confined to generators, transporters and disposers but include owners, operators and any person who causes, suffers, allows or permits pollution of the environment. The Comprehensive Environmental Response Compensation Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9604(e)(1) requires any person who has been associated with the pollution source or facility, upon the request of the Secretary of the DEQ, to furnish information relating to such waste and activities.

This office has been investigating the waste disposal activities at the facility formally known as the Lincoln Creosoting Company, Inc. ("Lincoln Creosoting"), in Bossier City, Louisiana. We understand that Joslyn Manufacturing and Supply Co. owned and operated this property from August 1, 1950 through December 1, 1969. As a former owner and operator we feel that you are a party responsible under La. R.S. 30:1149.13 and 42 U.S.C. § 9607(a) for the cleanup of wastes that have been found at this site.

DEQ has reason to believe that as a result of your activities, hazardous wastes and hazardous substances have been and continue to be discharged from the site. Accordingly, you are hereby requested to provide information and answers to the following questions:

1. Please state when you purchased and sold the Lincoln Creosoting property, what business purposes the property was used for, and what facilities of businesses you managed or operated on the property.

2. Please identify all known managers and supervisory personnel of your facilities on the Lincoln Creosoting property, the last known address of such persons, the dates of their employ, and their job functions.

3. Please describe your operations and physical facilities at the Lincoln Creosoting property in Bossier City, Louisiana, specifically including but not limited to the following:

    a. What wood treating process or processes did you use (*e.g.*, creosote dipping or pressure treating, pentachlorophenol dipping or pressure treating, or treatment with chromated copper arsenic compounds through dipping or pressure treating)?

b. Please identify the former locations of all dipping, working, or storage tanks.

c. Where did you dispose of materials, especially bottoms, taken from dip tanks?

d. Please describe what actions were taken with respect to any contaminated soil from spilling around dipping or treating tanks.

e. Were dipping tanks or pressure treating cylinders ever repaired, replaced, or abandoned? If so, please provide details in connection therewith.

f. Please describe all sources of wastewater, describe all wastewater treatment facilities and operations, and state where such wastewater was discharged.

g. Please provide information on any and all known spills of treating compounds or other chemicals, including a history of such spills and of any cleanup activities taken in connection therewith.

h. Please describe and identify the location of all retention or sump ponds and creosote or oil recovery systems.

i. Please state the location of all piping and provide details about the capacity and function of such piping. Was such piping above ground or underground? Please state whether such piping was ever repaired, and if so, when and under what circumstances.

j. Please describe your actions with respect to containing or controlling stormwater runoff.

k. What is the generic name and chemical character of all hazardous wastes or hazardous substances that

you generated or disposed of at the Lincoln Creosoting facility?

l. For each hazardous waste or hazardous substance identified above, please give the total volume of such wastes generated during your operation of the facilities, in gallons for liquids and in cubic yards for solids, which you disposed of or caused to be disposed of, and list the date of such activity.

m. What arrangements were made to transport these hazardous wastes or hazardous substances for disposal?

n. Who was responsible for arranging for or disposing of or transporting these hazardous wastes or hazardous substances; what was his or her previous address; and what is his or her current address?

o. Have you or do you know of the disposal of any other materials at the Lincoln Creosoting site which may or may not be hazardous wastes and/or hazardous substances? If so, please describe these materials in sufficient detail to allow the determination to be made as to whether or not these materials are hazardous.

4. Provide a copy of any insurance agreements covering the Lincoln Creosoting facility. If a copy of the agreement is not available, identify the name and address of the insurer and provide a written description of the nature and extent of coverage, along with the policy number and date of issuance and the name of the insured party.

5. Please produce for inspection and copying at this office, within the time allowed for response to this request,

copies of all documents retained by your company relating to Lincoln Creosoting and to your response to the foregoing inquiries.

6. Please state whether you are aware of the existence of any documents relating to the foregoing inquiries that are not in your possession, and, if so, identify their custodian.

7. Please identify the sources of information that you have utilized in responding to this request.

In responding to the foregoing questions, please list the types of documents that are maintained, the date of the documents, the author of the documents, the current location of the documents, and their current custodian. As used herein, the term "document" means writings (handwritten, typed, or otherwise produced or reproduced), and includes, but is not limited to, any invoices, checks, receipts, correspondence, offers, contracts, agreements, manifests, licenses, permits, bids, proposals, policies of insurance, logs, minutes of meetings, memoranda, notes, calendar or diary entries, charts, maps, photographs, drawings, manuals, reports of analysis, analytical work sheets, chromatographs, studies, reports of scientific study or investigation, telegrams, teletypes, magnetic tapes, punch cards, recording discs, computer printouts or other data compilations from which information can be obtained or translated.

Your response to this request must be sent to DEQ within thirty calendar days after receipt of this letter. Failure to comply with this request may result in an order requiring compliance or civil action for appropriate relief. Failure to respond could subject you to administrative and civil penalties. Should you find, at any time after submittal of the requested information, that any portion of the submission is false or incorrect, please notify DEQ.

Please direct your response to my attention.

Very truly yours,

/s/_____
Patricia L. Norton
Secretary

WBD/bhh

cc: Mr. Robert E. Holden
Liskow and Lewis

APPENDIX B.

LISKOW & LEWIS
ATTORNEYS AT LAW

New Orleans, 70139-5099
February 7, 1986

Department of Environmental Quality
State of Louisiana
Post Office Box 44307
Baton Rouge, LA 70804
Attn: William B. DeVille

VIS U.S. EXPRESSMAIL

Re: Lincoln Creosoting Facility
Bossier City, Louisiana

Dear Sirs:

This letter is the response of Joslyn Corporation to the information request of the Department of Environmental Quality (DEQ), dated December 6, 1985, directed to "Joslyn Manufacturing & Supply Company." Joslyn's response to each of the questions is set forth below:

Question No. 1: Please state when you purchased and sold the Lincoln Creosoting property, what business purpose the property was used for, and what facilities or businesses you managed or operated on the property.

Response to Question No. 1: Joslyn purchased the Lincoln Creosoting property on August 1, 1950, from the Lincoln Creosoting Company, Inc. On information and belief, Joslyn avers that T.L. James & Company was at all relevant times the controlling shareholder in Lincoln Creosoting Company.

On December 1, 1969, Joslyn sold this property to Koppers Company, Inc. As part of the conveyance, Joslyn conveyed to Koppers all working tanks, storage tanks, treating cylinders, piping and related immovables, as well as all treatment chemicals in storage and all residual chemicals in such equipment to Koppers, except that Joslyn retained ownership of approximately 8000 gallons of creosote oil.

At all times that it owned the plant, Joslyn used the property as the site of a wood preserving plant.

Question No. 2: Please identify all known managers and supervisory personnel on your facilities on the Lincoln Creosoting property, the last known address of such persons, the dates of their employ, and their job functions.

Response to Question No. 2:

George Bauer
309 Woodbine Drive
Shreveport, Louisiana 71105
Employed by Joslyn from 1946 through 1980. Mr. Bauer was the plant manager of the Bossier City Treating Plant from 1950 through 1963.

Lester Tschannen
address unknown
Plant manager in 1967.

L. B. Polzin (deceased)
Mr. Polzin was the plant superintendent at the Bossier City plant from 1949 through 1961.

Irving Kueker
1007 Riding Club Lane
Shreveport, Louisiana 71118
Mr. Kueker was the maintenance supervisor at the Bossier City plant from 1959 through 1969.

William Guyton (deceased)
Mr. Guyton was the Plant Manager for some time uncertain between 1963 and 1969.

Al Tucker (deceased)
Mr. Tucker was the Plant Manager at the Bossier City facility for some time between 1963 and 1969.

Sherman T. Fisher
2642 Randolph Street
Shreveport, LA 71109
Mr. Fisher was the Plant Superintendent from 1962 through 1969.

Question No. 3: Please describe your operations and physical facilities at the Lincoln Creosoting property in Bossier City, Louisiana, specifically including, but not limited to, the following:

a. What wood treating process or processes did you use (e.g., creosote dipping or pressure treating, pentachlorophenol dipping or pressure treating, or treatment with chromated copper arsenic compounds through dipping or pressure treating)?

Response to Question No. 3(a): Joslyn used Creosote pressure treating from 1950 to 1969; pentachlorophenol (PCP) pressure treating from 1960 through 1969; and chromated arsenic copper solution (CAC) from 1964 to 1969.

Question No. 3(b): Please identify the former locations of all dipping, working, or storage tanks.

Response to Question No. 3(b): Joslyn had four storage tanks on the west property line; four working tanks, two on the northwest corner of the treating plant building, and two on the northeast corner of the treating plant building; four treating cylinders in the plant building; one rueping tank directly south of the treatment plant building. The attached Figures "A" and "B" show each of these locations.

Question No. 3(c): Where did you dispose of materials, especially bottoms, taken from dip tanks?

Response to Question No. 3(c): Joslyn did not use dip tanks, but instead used pressure treating cylinders. Creosote and PCP

treating generated some sludges in the working tanks and pressure treating cylinders. CAC treatment did not generate sludges, and was operated as a closed system without the generation of waste materials. Creosote sludge was used to pave the roadbed leading to the plant, it was spread as a defoliant in the working areas of the plant to control weeds; some was buried in the "framing" area of the plant; some was given to Mr. Harland Beene for use on his plantation roads; some was taken for disposal to the city dump; and some was disposed of by an unknown waste disposal firm.

Question No. 3(d): Please descibe what actions were taken with respect to any contaminated soil from spilling around dipping or treating tanks.

Response to Question No. 3(d): A concrete lined sump underneath the treating cylinders prevented soil contamination around the treating cylinders.

Question No. 3(e): Were dipping tanks or pressure treating cylinders ever repaired, replaced, or abandoned? If so, please provide details in connection therewith.

Response to Question No. 3(e): Treating cylinders were regularly repaired. In the mid-1950s, two were replaced entirely. The old cylinders were cut up for scrap metal, and replaced with two new cylinders. Sludge in the replaced cylinders, if any, would have been handled routinely.

Question No. 3(f): Please describe all sources of wastewater, describe all wastewater treatment facilities and operations, and state where such wastewater was discharged.

Response to Question No. 3(f): All process wastewater was routed to the concrete lined sump (*e.g.*, drains and drippings from all four treatment cylinders). Creosote is heavier than water and would settle to the bottom of the sump. That creosote

was recycled. The sump was present when Joslyn bought the facility from Lincoln Creosoting Company. At the time of purchase, the overflow wasterwater from the sump ran into a ditch that ran along the south property line of the property. That ditch drained into a slough on the property. At the time of purchase, there were heavy accumulations of creosote in the ditch lining and in the slough.

In approximately 1952 to 1953, Joslyn began improving the wastewater treatment system. In 1954 Joslyn installed a 30,000-gallon (approximate) settling tank as a secondary treatment system. This tank was installed in series with the sump. This tank had one baffle, dividing the tank into two compartments for creosote recovery. Some time later, also in approximately 1954, Joslyn put in another 10,000-gallon settling tank and installed three baffles to allow sequential settling and recovery of the creosote in two compartments. This tank was installed in series behind the 30,000-gallon settling tank and the sump. The water in the third stage of the second settling tank went directly into the south ditch.

About 1960, when Joslyn began using PCP, it installed a small settling pond in series with the other equipment. The pond was divided into three compartments with the first two larger than the third. PCP is lighter than water, and was therefore skimmed and recovered from the top of the first compartment. As with the other stages of the treatment system, creosote was recovered from the bottom of all compartments.

Question No. 3(g): Please provide information on any and all known spills of treating compounds or other chemicals, including a history of such spills and of any cleanup activities taken in connection therewith.

Response to Question No. 3(g): Any spills went directly into the sump underneath the treating cylinders. On information and belief, however, Joslyn is aware that Lincoln Creosoting

had a major fire during World War II which may have involved a spill of some type.

Question to No. 3(h): Please describe and identify the location of all retention or sump ponds and creosote or oil recovery systems.

Response to Question No. 3(h): See the attached Figures "A" and "B".

Question No. 3(i): Please state the location of all piping and provide details about the capacity and function of such piping. Was such piping above ground or underground? Please state whether such piping was ever repaired, and if so, when and under what circumstances?

Response to Question No. 3(i): Most piping was overhead. Steam pipes from the boiler room to the treating cylinder were 8-inch overhead pipes. All recovery tanks, storage tanks, and treating cylinders were connected with pipes. The pipes from the storage tanks to the treating plant were underground. There were no direct pipes from the storage tanks to the treating cylinders. The pipes led from the storage tanks to the working tanks (two-inch pipes) and from the working tanks to the treating system (six-inch pipes). The sump and baffle system piping was six inches. Most other piping was four inches.

Piping was regularly repaired. Valves and elbows were replaced as necessary as part of routine maintenance.

Question No. 3(j): Please describe your actions with respect to containing or controlling stormwater runoff.

Response to Question No. 3(j): The plant had drainage ditches to the north and south of the plant. Joslyn maintained its "white yard" (for untreated wood) on the north side of the yard, and any storm water drainage on the north ditch would have been uncontaminated. The south ditch, as noted above,

was lined with heavy deposits of creosote at the time of purchase and led to a slough on the eastern side of the property. Shortly after Joslyn purchased the Bossier City plant, an accidental fire ignited a pond in that slough. Joslyn installed a drainage ditch to bypass the slough. That drainage ditch led storm water and treated wastewater off the facility property to parish drainage ditches.

Question No. 3(k): What is the generic name and chemical character of all hazardous waste or hazardous substances that you generated or disposed of at the Lincoln Creosoting Facility?

Response to Question No. 3(k): Creosote and PCP sludges.

Question No. 3(l): For each hazardous waste or hazardous substance identified above, please give the total volume of such waste generated during your operation of the facilities, in gallons for liquids and in cubic yards for solids, which you disposed of or caused to be disposed of, and list the date of such activity.

Response to Question No. 3(l): Joslyn cannot develop any reasonable estimates of the amount of waste generated. Such waste was generated from 1950 through 1969.

Question No. 3(m): What arrangements were made to transport these hazardous wastes or hazardous substances for disposal?

Response to Question No. 3(m): On-site waste sludge was transported with regular plant equipment. It would have been transported in a large box rather than in barrels or drums. Joslyn may have sent some waste sludge in its own trucks to the city dump. A private waste disposal firm was used to dispose of some waste; the name of such firm is unknown. Mr. Beene transported some waste sludge in his own dump trucks to his property.

Question No. 3(n): Who was responsible for arranging for or disposing of or transporting these hazardous wastes or hazardous substances; what was his or her previous address; and what is his or her current address?

Response to Question No. 3(n): The Joslyn plant managers were responsible for these functions.

Question No. 3(o): Have you or do you know of the disposal of any other materials at the Lincoln Creosoting site which may or may not be hazardous waste and/or hazardous substances? If so, please describe these materials in sufficient detail to allow the determination to be made as to whether or not these materials are hazardous.

Response to Question No. 3(o): Sawdust, wood shavings, and scrap bark from untreated wood. Office and yard trash would have been disposed of off-site.

Question No. 4: Provide a copy of any insurance agreements covering the Lincoln Creosoting Facility. If a copy of the agreement is not available, identify the name and address of the insurer and provide a written description of the nature and extent of coverage, along with the policy number and date of issuance and the name of the insured party.

Response to Question No. 4: Liberty Mutual Insurance Co., 230 West Monroe St., Chicago, Ill. 60606 (CGL policy, limits, policy numbers, and dated unknown). Copies of the insurance agreements are unavailable.

Questino No. 5: Please produce for inspection and copying at this office, within the time allowed for response to this request, copies of all documents retained by your company relating to Lincoln Creosoting and to your responses to the foregoing inquires.

Response to Question No. 5: Joslyn has the following records relating to the Lincoln Creosoting facility:

1. Three photographs from the 1950s (reproductions are attached)
2. Dun and Bradstreet, Lincoln Creosoting Company, Inc., Supplement to Report of August 31, 1949, May 15, 1950.
3. Dun and Bradstreet, Inc., Memorandum, May 5, 1950.
4. Dun and Bradstreet, Inc., Financial Statement Interim Report, Lincoln Creosoting Company, Inc., April 25, 1950.
5. Financial Statement Interim Continuous Service Report, Lincoln Creosoting Company, Inc., September 1, 1949.
6. Dun and Bradstreet, Inc., Mercantile Credit Report, Lincoln Creosoting Company, Inc., August 31, 1949.
7. Dun and Bradstreet, Inc., Specialized Report, Supplement to Report of 8/23/48, Lincoln Creosoting Company, Inc., April 5, 1949.
8. Dun and Bradstreet, Specialized Report, Lincoln Creosoting Company, Inc., August 23, 1948.
9. Dun and Bradstreet, Inc., Memorandum Re: Lincoln Creosoting Company, Inc., March 18, 1948.
10. Dun and Bradstreet, Inc., Specialized Report, Supplement to Report of 6/16/47, Lincoln Creosoting Company, Inc., February 6, 1948.

11. Dun and Bradstreet, Inc., Specialized Report, Lincoln Creosoting Company, Inc., June 16, 1947.

12. Bill of Sale between Joslyn Manufacturing & Supply Company and Koppers Company, Inc., December 1, 1969.

13. Act of Sale by Joslyn Manufacturing and Supply Company to Koppers Company, Inc., December 9, 1969.

14. Memorandum of Agreement between Joslyn Manufacturing & Supply Company and Lincoln Creosoting Company, Inc., July 24, 1950.

15. Deed of Conveyance from Lincoln Creosoting Company, Inc., to Joslyn Manufacturing & Supply Company, August 1, 1950.

16. Map, Joslyn Mfg., Bossier, La., June 26, 1968.

Items 1-15 are attached. A copy of item 16 is being made and will be forwarded to the State promptly.

Question No. 6: Please state whether you are aware of the existence of any documents relating to the foregoing inquiries that are not in your possession, and, if so, identify their custodian.

Response to Question No. 6: Joslyn is unaware of the existence of any documents relating to the foregoing inquiries that are not in its possession.

Question No. 7: Please identify the sources of information that you have utilized in responding to this request.

Response to Question No. 7: Recollection of Mr. George Bauer, Mr. Irvin G. Kueker and Mr. Walter Schoenholz.

We hope this information will be of assistance to you.

Yours very truly,

/s/_____
Robert E. Holden
Counsel for Joslyn Corporation

REH/wp/182

cc: Patricia L. Norton, Secretary
Department of Environmental Quality
Post Office Box 44066
Baton Rouge, LA 70804

bcc: Wayne Koprowski, Esq.

APPENDIX C.

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF LINCOLN
CREOSOTING FACILITIES,
BOSSIER CITY, LOUISIANA

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
LA. R.S. 30:1051 ET SEQ., AND
THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION,
AND LIABILITY ACT,
42 U.S.C. § 9601 ET SEQ.

COMPLIANCE ORDER

The following COMPLIANCE ORDER is issued by the Secretary, Department of Environmental Quality, State of Louisiana, under the authority granted in the Louisiana Environmental Quality Act, La. R.S. 30:1051 *et seq.* (hereinafter referred to as "the Act"), and particularly Sections 30:1147.1, 30:1097 and 30:1149.95 of the Act, and under the authority granted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9061 *et seq.* (hereinafter "CERCLA"), and particularly 42 U.S.C. § 9607(a):

I.

This COMPLIANCE ORDER is issued to the following named Respondents:

A. T. L. James and Company, Inc., through its agent for service of process, G. L. Dyson, 106 West Mississippi Avenue, Ruston, Louisiana 71270;

B. Joslyn Corporation, through its attorneys, J. Berry St. John, Jr., and Robert E. Holden, Liskow & Lewis, 50th Floor, One Shell Square, New Orleans, Louisiana 70139;

C. Koppers Company, Inc., through its agent for service of process, C. T. Corporation System, 1300 Hibernia Bank Building, New Orleans, Louisiana 70112;

D. David Myatt, whose address is P.O. Box 8098, Shreveport, Louisiana 71148;

E. Lowell T. Shoemaker, whose address is 150 Jordan Street, Shreveport, Louisiana 71101;

F. Herman K. Beebe, whose address is 6001 Financial Plaza, Shreveport, Louisiana 71130;

G. Mid-South Securities, Inc., through its agent for service of process, James Adams, 6001 Financial Plaza, Shreveport, Louisiana 71130;

H. Powerline Supply Company, through its agent for service of process, William M. Elliott, 2116 California Drive, Bossier City, Louisiana 70011;

I. Lance D. Alworth, whose address is 990 Highland Drive, Suite 300, Solana Beach, California 92075;

J. Louisiana and Arkansas Railway Company, through its agent for service of process, A. R. Carmody, Jr., Beck Building, Seventeenth Floor, Shreveport, Louisiana 71102;

K. Mr. Francis P. Grigsby, whose address is 323 Hamilton Road, Bossier City, Louisiana 71111; and

L. Mr. Wesley D. Burdine, whose address is 323 Hamilton Road, Bossier City, Louisiana 71111.

Findings of Fact.

I.

The discharge or disposal of hazardous substances has occurred at the facility formerly known as the Lincoln Creosoting Company, Inc., in Bossier City, Louisiana. This property is located in Section 21, Township 18 North, Range 13 West, Bossier Parish in an area historically known as the "Cloverdale Farm" (see attached Figure 1).

II.

The condition of the Lincoln Creosoting facility is evidenced by the study prepared for the Department by C-K Associates, Inc., entitled "Emergency Site Investigations, Lincoln Creosote Facilities, Bossier City, Louisiana", dated October 14, 1985. This document is available for review at the Inactive and Abandoned Sites Division of the Department of Environmental Quality, Baton Route, Louisiana.

III.

Based on the information presented in the C-K Associates report, the Department is of the opinion that the hazardous substances discharge or disposal at Lincoln Creosoting may present an immiment and substantial endangerment to the health of those persons who may inadvertently come into contact with such substances. In the opinion of the Department, the potential risks associated with possible inadvertent contact with such substances necessitates construction of a fence to prevent unauthorized access.

IV.

Investigation by the Department has shown that T. L. James and Company was the controlling shareholder of Lincoln Creo-

soting from 1935 through the time of Lincoln Creosoting's sale of its facilities to Joslyn Manufacturing and Supply Company on August 1, 1950.

V.

Joslyn Manufacturing and Supply Company owned and operated the Lincoln Creosoting facility from August 1, 1950, through December 1, 1969, when it was sold to Koppers Company.

VI.

Koppers Company owned and operated the facility from December 1, 1969, through January 5, 1971, and dismantled all manufacturing operations. On January 5, 1971 Koppers Company sold the property to the Myatt family.

VII.

The Myatt family owned the property from January 5, 1971, through January 18, 1971, when it was sold to the Pollad family.

VIII.

The Pollard family owned the property from January 18, 1971, through May 14, 1971, when it was sold to Lowell T. Shoemaker.

IX.

Louisiana and Arkansas Railway Company owned property adjoining the facility from May 29, 1923 through March 3, 1972, and provided rail service to the facility. The property owned by Louisiana and Arkansas Railway Company is contaminated and is part of the "Site" which requires remedial action.

X.

Lowell T. Shoemaker purchased the Lincoln Creosoting property (Paragraph VIII) from the Pollard family on May 14, 1971. On March 3, 1972, Lowell T. Shoemaker purchased the adjoining property owned by the Louisiana and Arkansas Railway Company (Paragraph IX). On March 13, 1975, Lowell T. Shoemaker sold both parcels to Herman K. Beebe.

XI.

Herman K. Beebe owned said property from March 13, 1975, through October 11, 1977, at which time he sold it to Mid-South Securities, Inc.

XII.

Mid-South Securities owned the property from October 11, 1977 when it was subdivided to the following parties:

A. Francis P. Grigsby and Wesley D. Burdine jointly purchased Lots 1-A and 2-A on December 11, 1985. On January 10, 1986, Wesley D. Burdine sold his interest to Francis P. Grigsby. Francis P. Grigsby is the current owner of Lots 1-A and 2-A, of the Lincoln Creosoting Facility.

B. Powerline Supply Company purchased Lots 1-B and 2-B of the Lincoln Creosoting Facility, on August 23, 1982, and is the current owner.

C. Lance D. Alworth purchased Lots 1-C of the Lincoln Creosoting Facility, on April 15, 1983, and is the current owner.

XIII.

The property listed in Paragraph XII, A-C constitutes the areas containing hazardous waste which require immediate remedial action and is referred to herein as the "Site".

Findings of Law.

I.

The foregoing respondents are "owners and operators" of disposal facilities or "generators" of hazardous substances subject to liability for cleanup and remedial cost under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607.

II.

The foregoing respondents are "generators" or "disposers" subject to remedial costs and cleanup liability for hazardous waste disposal sites under Louisiana Environmental Quality Act, La. R.S. 30:1149.46(A).

III.

The construction of a fence around the Site (that land which originally was the Lincoln Creosoting and the Louisiana and Arkansas Railway Company properties) is a "remedial action" consistent with the National Contingency Plan established under CERCLA.

IV.

The cost of the construction of a fence around the Site is a "remedial cost" under La. R.S. 30:1149.42(9)(a).

Compliance Order

Based on the foregoing FINDINGS OF FACT and FINDINGS OF LAW, the respondents are hereby ORDERED:

I.

To submit to the Department within thirty (30) days after receipt of this ORDER, a plan to fence the Site as defined in Paragraphs XII. A - C of this document.

II.

To complete fencing within sixty (60) days after receipt of this ORDER.

III.

To be hereby notified that respondent's refusal to comply with this ORDER and the provisions herein will subject the respondents to possible enforcement procedures under Section 1073 of the Act which could result in the assessment of civil penalties in an amount not to exceed $50,000 for each day of continued non-compliance.

IV.

To be further notified that the Department expects the respondents to communicate with each other and cooperate in formulating a Site security plan and in executing that plan. The Department will use its full authority to compel all responsible parties to contribute their fair share towards the development of and execution of the Site security plan. Full compliance by one or more parties with the terms of this ORDER will not excuse non-compliance by other responsible parties, and such failure to comply with this ORDER shall be deemed to be a continuing violation.

This COMPLIANCE ORDER is effective on date of issuance.

DONE AT BATON ROUGE, LOUISIANA, THIS 3RD DAY OF FEBRUARY, 1986.

/s/_____

Patricia L. Norton, Secretary
Department of Environmental Quality

All correspondence should be addressed to:

Department of Environmental Quality
Inactive and Abandoned Sites Division
Mr. William B. De Ville, Administrator
P. O. Box 44307
Baton Rouge, Louisiana 70804
Telephone: (504) 342-8925

APPENDIX D.

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF LINCOLN
CREOSOTING FACILITIES,
BOSSIER CITY, LOUISIANA

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
LA. R.S. 30:1051 ET SEQ., AND
THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION,
AND LIABILITY ACT,
42 U.S.C. § 9601 ET SEQ.

COMPLIANCE ORDER

The following COMPLIANCE ORDER is issued by the Secretary, Department of Environmental Quality, State of Louisiana, under the authority granted in the Louisiana Environmental Quality Act, La. R.S. 30:1051 *et seq.* (hereinafter referred to as "the Act"), and particularly Sections 30:1147.1, 30:1097 and 30:1149.95 of the Act, and under the authority granted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9061 *et seq.* (hereinafter "CERCLA"), and particularly 42 U.S.C. § 9607(a):

I.

This COMPLIANCE ORDER is issued to the following named Respondents:

A. Graham W. Rogers, whose address is P.O. Box 5832, Bossier City, Louisiana 71111;

B. Stephen A. Sipes, Jr., whose address is 10612 Deer Path, Shreveport, Louisiana 71115;

C. John Walker Price, whose address is 735 Kings Highway, Shreveport, Louisiana 71104; and

D. R. Lee Harvill, whose address is 3001 Old Minden Road, Bossier City, Louisiana 71111.

II.

COMPLIANCE ORDERS have also been issued to the following named respondents on February 3, 1986:

A. T. L. James and Company, Inc., through its agent for service of process, G. L. Dyson, 106 West Mississippi Ruston, Louisiana 71270;

B. Joslyn Corporation, through its attorneys, J. Berry St. John, Jr., and Robert E. Holden, Liskow & Lewis, 50th Floor, One Shell Square, New Orleans, Louisiana 70139;

C. Koppers Company, Inc., through its agent for service of process, C. T. Corporation System, 1300 Hibernia Bank Building, New Orleans, Louisiana 70112;

D. David Myatt, whose address is P.O. Box 8098, Shreveport, Louisiana 71148;

E. Lowell T. Shoemaker, whose address is 350 Jordan Street, Shreveport, Louisiana 71101;

F. Herman K. Beebe, whose address is 6001 Financial Plaza, Shreveport, Louisiana 71130;

G. Mid-South Securities, Inc., through its agent for service of process, James Adams, 6001 Financial Plaza, Shreveport, Louisiana 71130;

H. Powerline Supply Company, through its agent for service of process, William M. Elliott, 2116 California Drive, Bossier City, Louisiana 70011;

I. Lance D. Alworth, whose address is 990 Highland Drive, Suite 300, Solana Beach, California 92075;

J. Louisiana and Arkansas Railway Company, through its agent for service of process, A. R. Carmody, Jr., Beck Building, Seventeenth Floor, Shreveport, Louisiana 71102;

K. Mr. Francis P. Grigsby, whose address is 323 Hamilton Road, Bossier City, Louisiana 71111; and

L. Mr. Wesley D. Burdine, whose address is 323 Hamilton Road, Bossier City, Louisiana 71111.

Findings of Fact.

The discharge or disposal of hazardous substances has occurred at the facility formerly known as the Lincoln Creosoting Company, Inc., in Bossier City, Louisiana. This property is located in Section 21, Township 18 North, Range 13 West, Bossier Parish in an area historically known as the "Cloverdale Farm" (see attached Figure 1).

II.

The condition of the Lincoln Creosoting facility is evidenced by the study prepared for the Department by C-K Associates, Inc., entitled "Emergency Site Investigations, Lincoln Creosoting Facilities, Bossier City, Louisiana", dated October 4, 1985. This document is available for review at the Inactive and Abandoned Sites Division of the Department of Environmental Quality, Baton Rouge, Louisiana.

III.

Based on the information presented in the C-K Associates report, the Department is of the opinion that the hazardous substances discharge or disposal at Lincoln Creosoting may present an imminent and substantial endangerment to the health of those persons who may inadvertently come into contact with such substances. In the opinion of the Department, the potential risks associated with possible inadvertent contact with such substances necessitates construction of a fence to prevent unauthorized access.

IV.

Investigation by the Department has shown that T. L. James and Company was the controlling shareholder of Lincoln Creosoting from 1935 through the time of Lincoln Creosoting's sale of its facilities to Joslyn Manufacturing and Supply Company on August 1, 1950.

V.

Joslyn Manufacturing and Supply Company owned and operated the Lincoln Creosoting facility from August 1, 1950 through December 1, 1969, when it was sold to Koppers Company.

VI.

Koppers Company owned and operated the facility from December 1, 1969 through January 5, 1971, and dismantled all manufacturing operations. On January 5, 1971 Koppers Company sold the property to the Myatt family.

VII.

The Myatt family owned the property from January 5, 1971 through January 18, 1971, when it was sold to the Pollard family.

VIII.

The Pollard family owned the property from January 18, 1971 through May 14, 1971, when it was sold to Lowell T. Shoemaker.

IX.

Louisiana and Arkansas Railway Company owned property adjoining the facility from May 29, 1923 through March 3, 1972, and provided all rail service to the facility. The property owned by Louisiana and Arkansas Railway Company is contaminated and is part of the "Site" which requires remedial action.

X.

Lowell T. Shoemaker purchased the Lincoln Creosoting property (Paragraph VIII) from the Pollard family on May 14, 1971. On March 3, 1972, Lowell T. Shoemaker purchased the adjoining property owned by the Louisiana and Arkansas Railway Company (Paragraph IX). On March 23, 1975, Lowell T. Shoemaker sold both parcels to Herman K. Beebe.

XI.

Herman K. Beebe owned said property from March 13, 1975 through October 11, 1977, at which time he sold it to Mid-South Securities, Inc.

XII.

Mid-South Securities owned the property from October 11, 1977 when it was subdivided and conveyed to the following parties:

A. Francis P. Grigsby and Wesley D. Burdine jointly purchased Lots 1-A and 2-A on December 11, 1985. On January 10, 1086, Wesley D. Burdine sold his interest to Francis P. Grigsby. On the same date, Francis P. Grigsby sold complete interest to Graham W. Rogers, Stephen A. Sipes, Jr., John Walker Price and R. Lee Harvill, who are the current owners.

B. Powerline Supply Company purchased Lots 1-B and 2-B of the Lincoln Creosoting Facility on August 23, 1982, and is the current owner.

C. Lance D. Alworth purchased Lot 1-C of the Lincoln Creosoting Facility on April 15, 1983, and is the current owner.

XIII.

The property listed in Paragraph XII. A-C constitutes the areas containing hazardous waste which require immediate remedial action and is referred to herein as the "Site".

Findings of Law.

I.

The foregoing respondents are "owners and operators" of disposal facilities or "generators" of hazardous substances subject to liability for cleanup and remedial cost under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607.

II.

The foregoing respondents are "generators" or "disposers" subject to remedial costs and cleanup liability for hazardous waste disposal sites under Louisiana Environmental Quality Act, La. R.S. 30:1149.46(A).

III.

The construction of a fence around the Site (that land which originally was the Lincoln Creosoting and the Louisiana and Arkansas Railway Company properties) is a "remedial action" consistent with the National Contingency Plan established under CERCLA.

IV.

The cost of the construction of a fence around the Site is a "remedial cost" under La. R.S. 30:1149.42(9)(a).

Compliance Order.

Based on the foregoing FINDINGS OF FACT and FINDINGS OF LAW, the respondents are hereby ORDERED:

I.

To submit to the Department within thirty (30) days after receipt of this ORDER, a plan to fence the Site as defined in Paragraph XII. A - C of this document.

II.

To complete fencing within sixty (60) days after receipt of this ORDER.

III.

To be hereby notified that respondent's refusal to comply with this ORDER and the provisions herein will subject the respondents to possible enforcement procedures under Section 1073 of the Act which could result in the assessment of civil penalties in an amount not to exceed $50,000 for each day of continued non-compliance.

IV.

To be further notified that the Department expects the respondents to communicate with each other and cooperate in formulating a Site security plan and in executing that plan. The Department will use its full authority to compel all responsible parties to contribute their fair share towards the development of and execution of the Site security plan. Full compliance by one or more parties with the terms of this ORDER will not excuse non-compliance by other responsible parties, and such failure to comply with this ORDER shall be deemed to be a continuing violation.

This COMPLIANCE ORDER is effective on date of issuance.

/s/_____

Patricia L. Norton, Secretary
Department of Environmental Quality

All correspondence should be addressed to:

Department of Environmental Quality
Inactive and Abandoned Sites Division
Mr. William B. De Ville, Administrator
P. O. Box 44307
Baton Rouge, Louisiana 70804
Telephone: (504) 342-8925

A35

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:
LINCOLN CREOSOTING FACILITIES,
BOSSIER CITY, LOUISIANA

COMPLIANCE ORDER

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
LA. R.S. 30:1051 ET SEQ.

The following COMPLIANCE ORDER is issued by the Secretary, Department of Environmental Quality, State of Louisiana, under the authority granted in the Louisiana Environmental Quality Act, La. R.S. 30:1051 *et seq*. (hereinafter referred to as "the Act"), and particularly Sections 30:1097, 30:1147.1, 30:1148, 30:1149.45 and 30:1149.46 of the the Act.

I.

This COMPLIANCE ORDER is issued to the following named Respondents:

A. Eagle Timber Co., Inc., through its agent for service of process, J. Ransdell Keene, Esq. of Evans, Keene & Mills Law Center, 331 Milam Street, P.O. Box 1784, Shreveport, Louisiana 71166.

B. Powerline Supply Company, through its attorney, Albert M. Hand, Jr., Esq. of Cook, Yancey, King & Galloway, 400 American Tower, Shreveport, Louisiana 71101.

C. Louisiana and Arkansas Railroad, through its agent for service of process, Bobby S. Gilliam, Esq., of

Wilkinson, Carmody and Gilliam, 1700 Beck Building, Shreveport, Louisiana 71166.

D. Lance Alworth, through his attorney, Albert M. Hand, Jr., Esq., of Cook, Yancey, King & Galloway, 400 American Tower, Shreveport, Louisiana 71101.

E. Mid-South Securities, through its agent for service of process, Arthur A. Vingiello, Esq., of Anderson & Adams, 5555 Hilton Avenue, 5th Floor, Baton Rouge, Louisiana 70808.

F. Francis P. Grigsby, whose address is 323 Hamilton Road, Bossier City, Louisiana 71111.

G. Wesley D. Burdine, through his attorney, Arthur A. Vingiello, Esq., of Anderson & Adams, 5555 Hilton Avenue, 5th Floor, Baton Rouge, Louisiana 70808.

H. Herman K. Beebe, through his attorney, Arthur A. Vingiello, Esq., of Anderson & Adams, 5555 Hilton Avenue, 5th Floor, Baton Rouge, Louisiana 70808.

I. L. D. Myatt, through his attorney, Albert M. Hand, Jr., of Cook, Yancey, King & Galloway, 400 American Tower, Shreveport, Louisiana 71101.

J. Lowell T. Shoemaker, whose address is 350 Jordan Street, Shreveport, Louisiana 71101.

K. Koppers Company, through its agent for service of process, Roger Sketter, Esq., of Lemle, Kelleher, Kohlmeyer, Hunley & Frilot, Pan American Life Center, New Orleans, Louisiana 70130.

L. Joslyn Corporation, through its agent for service of process, Robert E. Holden, of Liskow & Lewis, One Shell Square, New Orleans, Louisiana 70139.

M. T. L. James and Company, Inc., through its agent for service of process, Robert G. Dawkins, Esq. of Dawkins, Esq., of Dawkins, Coyle & Carter, 102 West Alabama Avenue, Ruston, Louisiana 71270.

Findings of Fact.

I.

The discharge or disposal of hazardous substances has occurred at the facility formerly known as the Lincoln Creosoting Company, Inc., in Bossier City, Louisiana. This property is located in Section 21, Township 18 North, Range 13 West, Bossier Parish in an area historically known as the "Cloverdale Farm", subdivided and renamed Hall Subdivision, Lots A-C, and referred to herein as "The Site".

II.

The condition of the Lincoln Creosoting Facility is evidenced by the study prepared for the Department by C-K Associates, Inc., entitled "Emergency Site Investigations, Lincoln Creosote Facilities, Bossier City, Louisiana", dated October 14, 1985. This document is available for review at the Inactive and Abandoned Sites Division of the Department of Environmental Quality, Baton Rouge, Louisiana.

III.

Based on the information presented in the C-K Associates report, the Department is of the opinion that the hazardous substances discharge or disposal at Lincoln Creosoting may present an imminent and substantial endangerment to the health of those persons who may come into contact with such substances.

IV.

The potential risks associated with contact with such substances necessitated construction of a chain-link fence enclosing a portion of the above site to prevent unauthorized access. This construction was completed in April, 1986, with costs incurred by the Respondents of the Compliance Order, dated on or about February 3, 1986.

V.

Eagle Timber Co., Inc. purchased Logs 1-A and 2-A from Francis P. Grigsby on July 17, 1986, after the Act of Sale, dated January 10, 1986, between Francis P. Grigsby and Graham Rogers, Stephen Sipes, John Walker Price and R. Lee Harvill was rescinded in judgment on the same date.

VI.

Respondents named in this Order and lettered "B" through "M" were identified and declared as Potential Responsible Parties in the Compliance Order dated February 3, 1986.

VII.

On February 21, 1986, a legal notice advising the general public of activities relating to the site was published in the Shreveport Journal, the official journal of the region.

VIII.

A "CEASE AND DESIST ORDER" dated July 21, 1986, was issued to Eagle Timber Co., Inc., forbidding the company or anyone acting on its behalf from entering the site unless accompanied by a Louisiana Department of Environmental Quality representative.

Conclusions of Law.

The foregoing respondents are "owners", "operators", "generators", and/or "disposers" subject to remedial and cleanup liability for hazardous waste disposal sites under the Louisiana Environmental Quality Act, La. R. S. 30:1149.46. (See also the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607).

Compliance Order.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Respondents are hereby ORDERED:

I.

To submit to the Department within thirty (30) days from the date of execution of this ORDER, a letter indicating whether Respondent will comply with this ORDER. Compliance will require the following:

Phase 1:

Within 90 days after the execution of this order, develop and submit a plan, for Departmental approval, of a complete investigation of the site and its affected areas, including a time schedule of actions.

Phase 2:

Execute the Departmental approved investigation in accordance with the time table set therein.

Phase 3:

Develop and submit a plan, for Departmental approval, for cleanup of those problem areas found during Phase 1, incorporating a time schedule of actions to be carried out.

Phase 4:

Execute the Departmental approved cleanup plan in accordance with the time table set therein.

II.

To be hereby notified that Respondent's refusal to comply with this ORDER, and the provisions herein, will subject the Respondents to possible enforcement procedures under Section 1073 of the Act which could result in the assessment of civil penalties in an amount not to exceed $50,000 for each day of continued non-compliance.

III.

To be further notified that the Department expects the RESPONDENTS TO COMMUNICATE AND COOPERATE WITH EACH OTHER in formulating and executing this ORDER. The Department will use its full authority to compel all responsible parties to contribute their fair share towards the development of, and execution of, the provisions of this ORDER. Full compliance by one or more parties with the terms of this ORDER will not excuse non-compliance by other responsible parties, and such failure to comply with this ORDER shall be deemed to be a continuing violation.

This COMPLIANCE ORDER is effective on date of issuance.

DONE AT BATON ROUGE, LOUISIANA, THIS 6th DAY OF AUGUST, 1986.

/s/_____

Patricia L. Norton, Secretary
Department of Environmental Quality

All correspondence should be addressed to:

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